

APR 29 2019

ENFORCEMENT COMMISSION

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Mary L. Kalencik,
Brooklyn

File No. 2017-068A

AGREEMENT CONTAINING CONSENT ORDER

This Agreement by and between David Fuss, of the Town of Brooklyn, County of Windham, State of Connecticut, hereinafter referred to as "Respondent," and the undersigned authorized representative of the State Elections Enforcement Commission, is entered into in accordance with Connecticut General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance herewith, the parties agree that:

1. Complainant alleged that Respondent and Wayne Jolley, candidates running for First Selectman and Board of Selectman, respectfully, at the November 7, 2017 municipal election in the Town of Brooklyn violated General Statutes § 9-607.
2. Specifically, Complainant alleged that Respondent and Mr. Jolley placed an advertisement in a weekly publication where they claimed they would use "campaign money" to make a donation to the Brooklyn Board of Education for the purchase of school supplies for Brooklyn school students. The use of candidate committee funds, as alleged, would be an impermissible expenditure pursuant to General Statutes § 9-607.
3. This agreement and order is limited to Respondent. Any additional potential settlements with other individuals pertaining to this matter are treated under separate documents. Respondent has no prior history with the Commission.
4. On August 9, 2017 Respondent and Mr. Jolley filed a *Political Committee Registration* (SEEC Form 3) with the Brooklyn Town Clerk's office for the November 7, 2017 municipal election forming "*Fuss and Jolley for Brooklyn*" (hereinafter "Committee").
5. Respondent and Mr. Jolley registered the Committee as a political slate committee of two or more individuals to fund their candidacies for First Selectman and Board of Selectman, respectively. Mr. Maurice Lapierre was designated as Committee treasurer.
6. General Statutes § 9-602, provides in pertinent part:
 - (a) Except with respect to an individual acting alone, or with respect to a group of two or more individuals acting together that receives funds or makes or incurs expenditures not exceeding one thousand dollars in the aggregate, ***no contributions may be made, solicited or received and no expenditures***, other than independent

expenditures, *may be made, directly or indirectly, in aid of or in opposition to the candidacy for nomination or election of any individual* or any party or referendum question, *unless* (1) the candidate or chairman of the committee has filed a designation of a treasurer and a depository institution situated in this state as the depository for the committee's funds, or *(2) the candidate has filed a certification in accordance with the provisions of section 9-604.* In the case of a political committee, the filing of the statement of organization by the chairman of such committee, in accordance with the provisions of section 9-605, shall constitute compliance with the provisions of this subsection. [Emphasis added.]

7. General Statutes § 9-604, provides in pertinent part:

(a) *Each candidate for a particular public office or the position of town committee member shall form a single candidate committee for which he shall designate a treasurer and a depository institution situated in this state as the depository for the committee's funds and shall file a committee statement containing such designations, not later than ten days after becoming a candidate, with the proper authority as required by section 9-603.* The candidate may also designate a deputy treasurer on such committee statement. The treasurer and any deputy treasurer so designated shall sign a statement accepting such designation which the candidate shall include as part of, or file with, the committee statement.

(b) *The formation of a candidate committee by a candidate and the filing of statements pursuant to section 9-608 shall not be required if the candidate files a certification with the proper authority required by section 9-603, not later than ten days after becoming a candidate, and any of the following conditions exist for the campaign: (1) The candidate is one of a slate of candidates whose campaigns are funded solely by a party committee or a political committee formed for a single election or primary and expenditures made on behalf of the candidate's campaign are reported by the committee sponsoring the candidate's candidacy; ...* The filing of a certification under this subsection shall not relieve the candidate from compliance with the provisions of this chapter. [Emphasis added.]

8. General Statutes § 9-607, provides in pertinent part:
- (a) No financial obligation shall be incurred by a committee unless authorized by the treasurer, except that certain expenditures of a candidate's personal funds may be reimbursed as provided in subsection (k) of this section.

...

- (g) (1) As used in this subsection, *(A) "the lawful purposes of the committee" means: (i) For a candidate committee or exploratory committee, the promoting of the nomination or election of the candidate who established the committee,* except that after a political party nominates candidates for election to the offices of Governor and Lieutenant Governor, whose names shall be so placed on the ballot in the election that an elector will cast a single vote for both candidates, as prescribed in section 9-181, a candidate committee established by either such candidate may also promote the election of the other such candidate; ...
[Emphasis added.]

Alleged Impermissible Expenditure of "Campaign Funds"

9. The Commission determined by investigation that Respondent contributed *personal* funds to the Brooklyn Public Schools and not campaign or Committee funds as advertised in the *Turnpike Buyer* on August 30, 2017.
10. The Commission finds that the allegation that Respondent, by using campaign funds to donate school supplies to Brooklyn Public Schools, made an impermissible expenditure pursuant to General Statutes § 9-607, was not supported by the facts after investigation.
11. The Commission therefore dismisses the allegation of an impermissible expenditure of slate committee funds pursuant to General Statutes § 9-607, as it was not supported by the facts.

Failure to Complete Committee Registration

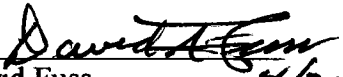
12. The Commission finds that Respondent failed to complete and file the required *Certification of Exemption From Forming a Candidate Committee* (SEEC Form 1B) designating the Committee as his sole funding vehicle, when he filed on August 9, 2017 his SEEC Form 3 registering the Committee with the Brooklyn Town Clerk's office.
13. The Commission concludes that Respondent violated General Statutes § 9-602 and § 9-604, by failing to file a Form 1B designating the Committee as his sole funding vehicle for the November 7, 2017 Brooklyn municipal election.

14. Respondent admits all jurisdictional facts and agree that this Agreement and Order shall have the same force and effect as a final decision and order entered into after a full hearing and shall become final when adopted by the Commission.
15. The Respondent waives:
 - a. Any further procedural steps;
 - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this Agreement.
16. Upon the Respondent's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against him concerning this matter.
17. It is understood and agreed by the parties to this Agreement that the Commission will consider this Agreement at its next meeting and, if the Commission rejects it, the Agreement will be withdrawn and may not be used as an admission by the Respondent in any subsequent hearing, if one becomes necessary.

ORDER

IT IS HEREBY ORDERED THAT Respondent henceforth strictly comply with the requirements of General Statutes § 9-602 and § 9-604.

The Respondent
By:


David Fuss
66 Bailey Woods Road
Counsel
Brooklyn, Connecticut

For the State of Connecticut
By:


Michael J. Brandi, Esq.
Executive Director and General

and Authorized Representative of the
Executive Director and General
Counsel and
Authorized Representative of the
State Elections Enforcement

20 Trinity Street, Suite 101
Hartford, Connecticut

Commission

Dated: _____

Dated: 4/26/19

Adopted this 15 day of May, 2019 at Hartford, Connecticut by vote of the Commission.



~~Anthony J. Castagno, Chairman~~
By Order of the Commission

Salvatore A. Bramante Vice Chair